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MEMORANDUM

TO: Committee on Legal Services

FROM: Christy Chase, Office of Legislative Legal Services

DATE: January 27, 2017

SUBJECT: Rule 47-900. E. of the Liquor Enforcement Division, Department of Revenue, concerning marijuana consumption, 1 CCR 203-2, Liquor Code (LLS Docket No. 170059; SOS Tracking No. 2016-00527).¹

Summary of Problem Identified and Recommendation

On November 18, 2016, the Liquor Enforcement Division (LED) in the Department of Revenue adopted Rule 47-900. E., which prohibits a person or entity licensed under article 46, 47, or 48 of title 12, C.R.S.,² from allowing the consumption of marijuana or marijuana products on the licensed premises. Although this rule is not scheduled to expire until May 15, 2018, Senator Kagan asked that the Office review the rule during the current regular session of the General Assembly.

The Office has reviewed Rule 47-900. E. and has concluded that the rule is not within the LED's rule-making authority. Specifically, no statute authorizes the LED to adopt

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., this rule is not scheduled to expire until May 15, 2018, but Senator Kagan asked that the Office of Legislative Legal Services review the rule during the current regular session of the General Assembly.

² Article 46 of title 12, C.R.S., is the "Colorado Beer Code;" article 47 of title 12, C.R.S., is the "Colorado Liquor Code;" and article 48 of title 12, C.R.S., governs the issuance of permits authorizing certain organizations or institutions to serve alcohol beverages at a special event.

a rule prohibiting the consumption of marijuana or marijuana products on a premises licensed under article 46, 47, or 48 of title 12, C.R.S. **Because the division lacks statutory authority to ban marijuana or marijuana product consumption on a liquor-licensed premises, we recommend that Rule 47-900. E. concerning marijuana consumption be repealed, effective May 15, 2017.**

Analysis

1. The LED banned marijuana or marijuana product consumption on liquor-licensed premises without any statutory authority.

On November 18, 2016, LED adopted a set of rules covering multiple topics, such as changes due to the passage of S.B. 16-197, changes to trade practices, and the regulation of powdered alcohol pursuant to H.B. 15-1031. Included in the rules is Rule 47-900. E., entitled "Marijuana consumption," which states:

Regulation 47-900. Conduct of Establishment.

E. Marijuana consumption.

No person or entity licensed under Article 46, 47, or 48 of Title 12, C.R.S. shall permit the consumption of marijuana and/or marijuana products as defined in sections 14 and 16 of Article XVIII of the Constitution of Colorado on any licensed premises.

The LED set forth the basis and purpose for Rule 47-900.E. as follows:

Regulation 47-900. Conduct of Establishment.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(L), 12-47-202(2)(a)(I)(M), 12-47-202(2)(a)(I)(P), and 12-47-202(2)(a)(I)(R), C.R.S. In accordance with the legislative declaration of section 12-47-102, C.R.S., the Colorado Liquor Code is deemed an exercise of the police powers of the State of Colorado for the protection of the economic and social welfare and the health, peace, and morals of the people of the State of Colorado. Regulation of the manufacture, distribution, and sale of alcohol beverages is regulated by the Colorado Liquor Code as a matter of statewide concern. The purpose of this regulation is to exercise proper regulation and control over the sale of alcohol beverages, promoting the social welfare, the health, peace and morals of the people of the State, and to establish uniform standards of decency, orderliness, and service within the licensed industry. Additionally, Sections 14 and 16 of Article XVIII of the Constitution of Colorado do not permit open and public consumption

of marijuana and the State Licensing Authority deems liquor licensed premises to be public places.³

The LED relies on its general rule-making authority in section 12-47-202 (1)(b), C.R.S., which provides:

12-47-202. Duties of state licensing authority - repeal. (1) The state licensing authority shall:

(b) Make such general rules and regulations and such special rulings and findings as necessary for the proper regulation and control of the manufacture, distribution, and sale of alcohol beverages and for the enforcement of this article and articles 46 and 48 of this title and alter, amend, repeal, and publish the same from time to time;

Additionally, the LED asserts that the rule is authorized by sections 12-47-202 (2)(a)(I)(L), (2)(a)(I)(M), (2)(a)(I)(P), and (2)(a)(I)(R), C.R.S, which provide:

12-47-202. Duties of state licensing authority – repeal. (2) (a) (I) Rules adopted pursuant to paragraph (b) of subsection (1) of this section may cover, without limitation, the following subjects:

(L) Health and sanitary requirements;

(M) Standards of cleanliness, orderliness, and decency, and sampling and analysis of products;

* * *

(P) Practices unduly designed to increase the consumption of alcohol beverages;

* * *

(R) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this article and articles 46 and 48 of this title;

While the general assembly has granted the LED broad rule-making authority, that authority relates to the "regulation and control of the manufacture, distribution, and

³ The LED initially filed the following statement of basis and purpose with the proposed rule but modified the statement after its rulemaking hearing on October 31, 2016:

Regulation 47-900. Conduct of Establishment.

The statutory authority for this regulation is located at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(L), and 12-47-202(2)(a)(I)(M), C.R.S. The purpose of this regulation is to establish general standards of decency, orderliness, and service required of licensees, their employees or agents, or any person on the licensed premises and to ensure that licensed premises are operated in an orderly and responsible manner in accordance with the legislative purpose of the Colorado Liquor Code in order to prevent risk to the economic and social welfare and the health, peace, and morals of the people of the state of Colorado.

sale of **alcohol beverages.**" (**Emphasis added**). The rule adopted by the LED does not regulate alcohol beverages; rather, it regulates the consumption of marijuana and marijuana products in what the LED deems "public places." The LED does not have statutory authority to regulate marijuana and marijuana products, nor does it have statutory authority to determine what constitutes a "public place" for purposes of consumption of marijuana pursuant to sections 14 and 16 of article XVIII of the state constitution.

The general assembly has assigned the regulation of both medical and retail marijuana and marijuana products to the executive director of the Department of Revenue as the "state licensing authority,"⁴ and the executive director has established within the department's enforcement division a marijuana enforcement division (MED) to regulate and control the "licensing of the cultivation, manufacture, distribution, and sale of" medical and retail marijuana.⁵

Although there is a "state licensing authority" created in section 12-47-201, C.R.S., to regulate the manufacture, distribution, and sale of alcohol beverages, that state licensing authority has separate and distinct duties and authorities from the state licensing authority created to regulate retail and medical marijuana. The executive director of the Department of Revenue has established a separate subdivision, similar to the MED, within its enforcement division, known as the "Liquor Enforcement Division" or "LED," to operate as the state licensing authority for the regulation of alcohol beverages. These two separate enforcement divisions in the department were created in separate areas of the law, they regulate separate and distinct products, and they do not have overlapping duties or authority. All matters relating to the regulation of marijuana and marijuana products are assigned to the MED, and all matters relating to the regulation of alcohol products are assigned to the LED.

The LED has authority over persons licensed under the "Colorado Beer Code," the "Colorado Liquor Code," and the special event permits laws, but that authority clearly does not extend to the regulation of marijuana and marijuana products. There is precedent for adding regulatory duties to the LED, as the general assembly added the regulation of tobacco products to the LED's jurisdiction with the passage of H.B. 98-1387.⁶ But when the general assembly created regulations of medical and retail

⁴ §§ 12-43.3-201 and 12-43.4-201, C.R.S.

⁵ *Id.* See also, **Addendum A**, the Department of Revenue's Organizational Chart.

⁶ See H.B. 10-1284, enacting the "Colorado Medical Marijuana Code", and H.B. 13-1317, enacting the "Colorado Retail Marijuana Code."

marijuana, the general assembly purposefully enacted two new articles in title 12, C.R.S., separate from the alcohol beverage laws and with a separate regulatory scheme. When regulating medical and retail marijuana, the general assembly did not add the regulation of marijuana and marijuana products to the existing statutory scheme and structure for regulating alcohol beverages or specifically grant the authority to regulate marijuana to the LED. The LED does not have statutory authority to regulate marijuana and marijuana products and therefore lacks statutory authority to adopt a rule regulating marijuana consumption. Additionally, as discussed in section 3, below, the general assembly is the branch of government empowered to define what is a "public place" for purposes of sections 14 and 16 of article XVIII of the state constitution, and the LED, as an executive branch agency, is not empowered to establish that policy.

2. The authority the LED relies on in its statement of basis and purpose does not grant the division the power to ban marijuana consumption on liquor-licensed premises.

In addition to relying on its general rule-making authority, the LED cites four provisions in section 12-47-202, C.R.S., as the basis for adopting Rule 47-900. E. The LED cites:

- Section 12-47-202 (2)(a)(I)(L), C.R.S., which authorizes rules regarding "[h]ealth and sanitary requirements;"
- Section 12-47-202 (2)(a)(I)(M), C.R.S., which authorizes rules regarding "[s]tandards of cleanliness, orderliness, and decency;"
- Section 12-47-202 (2)(a)(I)(P), C.R.S., which authorizes rules regarding "[p]ractices unduly designed to increase consumption of alcohol beverages;" and
- Section 12-47-202 (2)(a)(I)(R), C.R.S., which authorizes rules regarding "[s]uch other matters as are necessary for the fair, impartial, stringent, and comprehensive administration" of the Colorado Beer Code, the Colorado Liquor Code, and the laws governing special event permits.

The LED does not indicate or explain in the statement of basis and purpose for the rule how prohibiting marijuana consumption on a liquor-licensed premises is a health or sanitary requirement or a standard of cleanliness, orderliness, and decency, other than to state that the rule is "to exercise proper regulation and control over the sale of alcohol beverages, promoting the social welfare, the health, peace and morals of the people of the State, and to establish uniform standards of decency, orderliness, and service within the licensed industry." Similarly, the rule submittal lacks any

information that indicates or suggests that marijuana consumption is unduly designed to increase alcohol consumption and does not articulate how banning marijuana is necessary for the "fair, impartial, stringent, and comprehensive administration" of laws regulating the manufacture, distribution, and sale of alcohol beverages.

With regard to the assertion that banning marijuana consumption on liquor-licensed premises promotes Coloradans' health, both the state constitution⁷ and statutory law⁸ allow individuals with a debilitating medical condition to consume marijuana to address the symptoms or effects of the medical condition. Accordingly, based on the information submitted by the LED as part of its rulemaking, it is unclear how banning marijuana consumption on a liquor-licensed premises "promotes . . . the health" of Coloradans, particularly those who are patients with a valid registry identification card⁹ that authorizes use of medical marijuana.

Other LED rules that establish health and sanitary requirements pertain to the conditions of the licensed premises¹⁰ and the labeling and sampling of alcohol beverages.¹¹ Those rules address maintaining a clean environment where patrons are not at risk of contracting an illness or disease from unsanitary conditions or contaminated food or alcohol and nonalcohol beverages. However, none of those rules address the consumption or presence of particular products on the licensed premises, other than alcohol beverages.¹²

With regard to the LED rules establishing standards of cleanliness, orderliness, and decency, those rules generally pertain to requirements for maintaining order at a licensed premises. For example, Rule 47-900. A. prohibits a licensee from allowing

⁷ Colo. Const. art. XVIII, § 14.

⁸ Article 43.3 of title 12, C.R.S.

⁹ See § 25-1.5-106 (2)(e), C.R.S.

¹⁰ Rule 47-902, attached in **Addendum B**, requires retail licensees selling alcohol beverages for on-premises consumption to "maintain its establishment in [a] clean and sanitary condition" and if a restaurant, to maintain a food service license issued by the Colorado Department of Public Health and Environment "in full force and effect at all times while selling [alcohol] beverages for consumption therein." This same requirement appears in Rule 47-418.E., pertaining specifically to restaurants.

¹¹ Rule 47-904, attached in **Addendum B**, prohibits a licensee authorized to sell alcohol beverages for on-premises consumption from altering the original contents of an alcohol beverage container.

¹² For example, if a liquor-licensed premises is a restaurant, Rules 47-902 and 47-418. E. require the licensee to maintain a food service license, which means that the liquor licensee must comply with Colorado State Board of Health rules intended to "safeguard public health and provide to consumers food that is safe and unadulterated." See 6 CCR 1010-2.

"rowdiness, undue noise, or other disturbance or activity offensive to the senses of the average citizen."¹³ Rule 47-900. A. also prohibits a licensee from selling or serving a "habitual drunkard" or person who is visibly intoxicated, which appears to fall within the LED's authority to adopt rules regarding orderliness, as well as the authority to adopt rules regarding practices that are unduly designed to increase alcohol consumption.¹⁴

Rule 47-900. B. requires employees and patrons of a licensee to be clothed and prohibits employees or patrons from exposing specific body parts while on the licensed premises.¹⁵ Further, rule 47-900. C. prohibits employees from engaging in specified sexual acts or displaying specific body parts while on a licensed premises, and rule 47-900. D. prohibits a licensee from showing films or pictures depicting certain sexual acts or body parts.¹⁶

All of these rules, which are under the general category of rules establishing cleanliness, orderliness, and decency standards, and possibly rules addressing practices unduly designed to increase alcohol consumption, do, indeed, relate to conducting an orderly, decent, and respectable establishment. Prohibiting sexual acts on a liquor-licensed premises falls within traditional notions of what is "decent" in a business establishment. Prohibiting alcohol service to intoxicated patrons on a liquor-licensed premises also falls within the arena of operating a business in a "decent, orderly and respectable manner." As noted by the Colorado Supreme Court in *People v. Lowrie*,¹⁷ "[w]hile there is admittedly some generality in the statutory standards, . . . there can be no question that [the regulation prohibiting sales to intoxicated persons and exposure of sex organs] . . . is within the guidelines prescribed by the General Assembly."

On the other hand, there is, indeed, a question as to whether an agency rule prohibiting activity that is not clearly illegal under state law¹⁸—marijuana consumption—on a liquor-licensed premises falls under the statutory guidelines of

¹³ See **Addendum B**.

¹⁴ It appears that the LED rules refer to §12-47-202 (2)(a)(I)(P), C.R.S., only one time, and that reference was added to the statement of basis and purpose for the adoption of Rule 47-900. E., the subject of this memorandum.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *People v. Lowrie*, 761 P.2d 778, 783 (Colo. 1988).

¹⁸ Colo. Const. art. XVIII, §§ 14 and 16, and articles 43.3 and 43.4 of title 12, C.R.S.

what has historically been considered standards of cleanliness, orderliness, and decency. While those areas appear to cover a wide array of standards, the authority to adopt rules for operating establishments in a clean, orderly, and decent manner, or to address practices that are unduly designed to increase alcohol consumption, has limits.

Rule 47-900. E. is a departure from the typical types of rules addressing the orderly operation of a liquor-licensed premises, yet the LED does not explain how banning marijuana consumption on liquor-licensed premises fits within that category of rules. The rule submittal contains no information about how marijuana consumption on a liquor-licensed premises results in rowdiness or undue noise or creates a disturbance or activity offensive to the average citizen, nor does it specify how marijuana consumption is unduly designed to increase alcohol consumption. Given that a majority of voters in the state approved two separate constitutional amendments that authorize marijuana consumption, the "average citizen," arguably, does not appear to view marijuana consumption as "offensive."

Rule 47-900. E. banning marijuana consumption on liquor-licensed premises is not within what has typically been under the category of rules pertaining to health and sanitary conditions; orderliness, cleanliness, and decency; and practices unduly designed to increase alcohol consumption. Therefore, the rule should be repealed.

3. Banning marijuana consumption on a liquor-licensed premises is a policy decision for the general assembly.

By voter-initiated measures,¹⁹ Colorado has authorized the possession and use of both medical and retail marijuana. In both cases, the constitutional provisions impose limitations on the use or consumption of marijuana. For example, with regard to the use of medical marijuana, section 14 (5)(a)(II) of article XVIII prohibits a patient from engaging in "the medical use of marijuana in plain view of, or in a place open to, the general public." Section 16 (3)(d) of article XVIII specifies that it is not unlawful for a person to consume marijuana but further specifies that "nothing in this section shall permit consumption that is conducted openly and publicly."

¹⁹ Medical marijuana use was authorized by amendment 20, which was approved by voters in the 2000 general election and created section 14 of article XVIII of the state constitution; retail marijuana consumption was authorized by amendment 64, which was approved by voters in the 2012 general election and created section 16 of article XVIII of the state constitution.

Neither the "Colorado Medical Marijuana Code"²⁰ nor the "Colorado Retail Marijuana Code"²¹ defines public consumption of medical or retail marijuana or indicates the actions that constitute public or open consumption, but both codes specifically prohibit consumption of marijuana at an establishment licensed under either code²² and prohibit a person licensed to sell medical or retail marijuana to "provide public premises, or any portion thereof, for the purpose of consumption" of medical or retail marijuana.²³ While the general assembly has enacted a policy regarding the consumption of marijuana on marijuana-licensed premises, the general assembly has not adopted a similar policy with regard to consumption of marijuana on liquor-licensed premises and has not specifically addressed the issue of what constitutes open and public consumption. That, however, does not mean that a state agency is empowered to address the issue: That power remains within the domain of the legislative branch.

Article III of the Colorado Constitution distributes the powers of government among the legislative, executive, and judicial departments and prohibits the exercise of powers properly belonging to one of the departments by either of the other departments of government. Section 1 of article V of the state constitution vests the legislative power in the general assembly; section 2 of article IV of the state constitution vests the "supreme executive power" in the governor, who is tasked with faithfully executing the laws; and section 1 of article VI of the state constitution vests the judicial power in the supreme court and lower courts. The legislative power is the authority to make laws and appropriate state funds.²⁴ The enforcement and administration of the statutes are the executive powers.²⁵

In the case of consumption of marijuana, the LED has overstepped the limits of executive powers and has ventured to exercise legislative powers that are vested in the general assembly. Whether the consumption of marijuana should be prohibited at a liquor-licensed establishment is a policy question for the legislative branch of government to determine, not the executive branch. Absent statutory authority

²⁰ Article 43.3 of title 12, C.R.S.

²¹ Article 43.4 of title 12, C.R.S.

²² See §§ 12-43.3-901 (1)(a) and 12-43.4-901 (1), C.R.S.

²³ §§ 12-43.3-901 (4)(c) and 12-43.4-901 (4)(c), C.R.S.

²⁴ *McManus v. Love*, 179 Colo. 218, 499 P.2d 609, 610 (Colo. 1972).

²⁵ *Id.*

granting the LED the ability to adopt a rule addressing the issue of marijuana consumption on a liquor-licensed premises, the LED lacks authority to legislate this policy and "deem" a liquor-licensed premises to be a public place at which marijuana consumption is prohibited.

Recommendation

We therefore recommend that Rule 47-900. E. of the rules of the LED concerning marijuana consumption be repealed because the division lacks statutory authority to adopt a ban on marijuana or marijuana product consumption on a liquor-licensed premises.

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Organizational Chart



ADDENDUM B

(4) Civil and criminal liabilities for law violations

- c. No minimum instruction time or testing requirements shall apply

F. Records Retention

The certified seller – server training program providers for the Responsible Alcohol Beverage Vendor Program must keep proof of attendance and records of successful completion of the training for a minimum of three (3) years and make the records available to the Liquor Enforcement Division upon request.

Regulation 47-700. Inspection of the Licensed Premises.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(E), and 12-47-202(2)(a)(I)(O), C.R.S. The purpose of this regulation is to clarify the premises, books, and records subject to investigation by the licensing authority as well as records to be maintained by the licensee and the period of time such records shall be maintained.

- A. The licensed premises, including any places of storage where alcohol beverages are stored or dispensed, shall be subject to inspection by the State or Local Licensing Authorities and their investigators, or peace officers, during all business hours and all other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by licensees, access shall only be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee, such area shall be made available for inspection without delay; and upon request by authorized representatives of the licensing authority or peace officers, such licensee shall open said area for inspection.
- B. Each licensee shall retain all books and records necessary to show fully the business transactions of such licensee for a period of the current tax year and the three prior tax years. "Books" and "records" includes information and documents provided in a readable electronic/digital format, facsimile or paper.

Regulation 47-900. Conduct of Establishment.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(L), 12-47-202(2)(a)(I)(M), 12-47-202(2)(a)(I)(P), and 12-47-202(2)(a)(I)(R), C.R.S. In accordance with the legislative declaration of section 12-47-102, C.R.S., the Colorado Liquor Code is deemed an exercise of the police powers of the State of Colorado for the protection of the economic and social welfare and the health, peace, and morals of the people of the State of Colorado. Regulation of the manufacture, distribution, and sale of alcohol beverages is regulated by the Colorado Liquor Code as a matter of statewide concern. The purpose of this regulation is to exercise proper regulation and control over the sale of alcohol beverages, promoting the social welfare, the health, peace and morals of the people of the State, and to establish uniform standards of decency, orderliness, and service within the licensed industry. Additionally, Sections 14 and 16 of Article XVIII of the Constitution of Colorado do not permit open and public consumption of marijuana and the State Licensing Authority deems liquor licensed premises to be public places.

- A. Orderliness, loitering, serving of intoxicated persons.

Each person licensed under Article 46, Article 47, and Article 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner, and shall not serve a known habitual drunkard or any person who displays any visible signs of intoxication, nor shall they permit a known habitual drunkard or any person who displays any visible signs of intoxication to remain on the licensed premises without an acceptable purpose, nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct as defined by and provided for in Section 18-9-106, C.R.S., nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.

B. Attire and conduct of employees and patrons.

No person licensed under Article 46, Article 47, and Article 48 of Title 12, nor any employee or agent of such person licensed under these Articles shall engage in or permit the following:

1. Employment or use of any person in the sale or service of alcohol beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the public hair, anus, cleft of the buttocks, vulva or genitals.
2. Employment or use of the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in paragraph number (1) above.
3. Any person on the licensed premises touching, caressing or fondling the breasts, buttocks, anus, or genitals of any other person.
4. Any employee or person on the licensed premises wearing or using any device or covering of any kind, which exposes or simulates the breasts, genitals, anus, pubic hair or any other portion thereof.

C. Entertainment.

Live entertainment is permitted on any licensed premises, except that:

1. No person licensed under Article 46, Article 47, and Article 48 of Title 12, nor any employee or agent of such person licensed under these Articles shall engage in or permit any person to perform acts of or acts which simulate:
 - a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. The touching, caressing or fondling of the breasts, buttocks, anus or genitals.
 - c. The displaying of pubic hair, anus, vulva or genitals.
2. No licensee nor any employee or agent of such licensee shall engage in or permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.
3. No licensee nor any employee or agent of such licensee shall engage in or permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.
4. No licensee nor any employee or agent of such licensee shall wear or use any device or covering of any kind that exposes or simulates the breasts, genitals, anus, pubic hair or other portion thereof.

D. Visual displays.

No person licensed under Article 46, Article 47, and Article 48 of Title 12, nor any employee or agent of such person licensed under these Articles, shall engage in or permit on the licensed premises the showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

1. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
2. Any person being touched, caressed or fondled on the breasts, buttocks, anus or genitals.

3. Scenes wherein a person displays the vulva or the anus or the genitals.
4. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

E. Marijuana consumption.

No person or entity licensed under Article 46, 47, or 48 of Title 12, C.R.S. shall permit the consumption of marijuana and/or marijuana products as defined in sections 14 and 16 of Article XVIII of the Constitution of Colorado on any licensed premises.

F. Local ordinances.

This regulation shall not be deemed to authorize or permit any conduct, behavior or attire on licensed premises which is otherwise prohibited by any city or county ordinances.

Regulation 47-902. Sanitary Requirements.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(L), C.R.S. The purpose of this regulation is to require clean and sanitary conditions for on-premises consumption licensees.

Each retail licensee selling alcohol beverages for consumption on the premises, shall maintain its establishment in clean and sanitary condition and if the licensed establishment is a restaurant licensed by the Colorado Department of Public Health and Environment, it shall maintain such license in full force and effect at all times while selling such beverages for consumption therein.

Regulation 47-904. Product Labeling, Substitution, Sampling and Analysis.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(M), and 12-47-202(2)(a)(I)(N), C.R.S. The purpose of this regulation is to establish filling, labeling, and sampling and analyzing standards for alcohol beverages.

- A. No licensee, for the sale of alcohol beverages for consumption on the premises where sold, shall maintain thereon any container of alcohol beverage which contains any such substance other than that contained at the time such container was received by or delivered to the licensee. Nothing herein shall prohibit a licensee from using emptied liquor bottles with labels removed from filling them with non-alcohol items (e.g. marbles, sand, salt, pepper) for the purpose of decorations or display.
- B. No licensee, for the sale of alcohol beverages for consumption on the premises where sold, shall substitute one brand, type, or alcohol content of alcohol beverages for that which has been specifically requested by a customer, unless the customer expressly consents to the substitution.
- C. Except manufacturers or malt liquor manufacturers with an onsite wholesale sales room, no licensee shall refill or permit the refilling of any alcohol beverage container with alcohol beverage or reuse any such container by adding distilled spirits or any substance, including water, to the original contents or any portion of such original contents. There shall be no prohibition against the use of carafes, pitchers or similar serving containers.
- D. If sampling, analysis or other means shall establish that any such licensee has upon the licensed premises any bottle or other container which contains alcohol beverage of a different brand, type, or alcohol content than that which appears on the label thereof, such licensee shall be deemed to have violated this regulation.

- E. All licensees for the sale of alcohol beverages for consumption on the premises where sold shall, upon request of the Department of Revenue, Liquor Enforcement Division or any of its officers, make available to the person so requesting a sufficient quantity of such alcohol beverage to enable sampling or analysis thereof. The licensee shall be notified of the results of the sampling or analysis without delay.
- F. The manufacturer or importer of any alcohol beverage product sold in or shipped to Colorado must register said product with the Liquor Enforcement Division prior to the date of the product's initial intended date of sale or shipment. If required by applicable Federal laws or regulations, alcohol beverages sold in Colorado must have obtained either a "Certificate of Label Approval" or a "Certificate of Exemption" from the Alcohol and Tobacco Tax and Trade Bureau ("TTB").
- G. The manufacturer or importer of alcohol beverage products that have obtained a TTB "Certificate of Exemption" are required upon request to certify that their product's label will comply with TTB labeling criteria as found in the "Federal Alcohol Administration Act" 27 CFR Subchapter A - Liquor Part 4, Subpart D; Part 5, Subpart D; and Part 7, Subpart C.

Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Director of the Colorado Liquor Enforcement Division of the Department of Revenue, 1881 Pierce Street, Suite 108A, Lakewood, Colorado Tel: 303-205-2300, and copies of the material may be examined at any state publication depository library.

Regulation 47-905. Colorado Wineries – Labeling and Records

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(N), and 12-47-202(2)(a)(I)(O), C.R.S. The purpose of this regulation is to establish labeling and record keeping standards for Colorado wineries.

- A. A Colorado winery must include on the labels of all grape wines, even those exempted from approval by the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB), information identifying the appellation of origin such as country, state, province, county or viticultural area.
- B. A Colorado winery using the words "Colorado grown" on a label shall use only 100% Colorado grown grapes, fruit or other agricultural products in the manufacture of that labeled vinous liquor.
- C. Honey wine, mead or any vinous liquor the alcoholic content of which is primarily obtained from fermented honey shall not be subject to paragraph 1 of this regulation, 47-905, except that the use of the phrase "Colorado grown" shall require that all honey and any other agricultural products used to manufacture or flavor the wine must be grown, gathered or harvested within Colorado.
- D. A Colorado winery shall maintain records of the purchase and harvest of agricultural produce used in the manufacture of each of its vinous liquors. Such records shall be sufficient to verify the source of agricultural produce used in the manufacture of vinous liquors. These records shall be available for inspection by the Liquor Enforcement Division for a period of three years after the first sale of each vinous liquor, or longer if required by other applicable statutes or regulations.
- E. Any stock of printed labels in the possession of a winery prior to this regulation taking effect shall be exempt from these regulations until such time as that stock of printed labels is depleted. Neither this paragraph nor any other provision in this regulation shall be construed to supersede any more stringent statute or regulation. More specifically, labels exempted from this regulation under this paragraph are in no way exempt from complying with any and all applicable federal wine labeling requirements.
- F. A Colorado limited winery shall, on or before February 28, annually declare on a form provided by the Liquor Enforcement Division that it did not manufacture more than 100,000 gallons of vinous liquor in the preceding calendar year.

Regulation 47-906. Container Size

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to establish container size standards for vinous or spirituous liquors, available for sale in different licensed establishments.

- A. No manufacturer or wholesaler shall sell or deliver any vinous or spirituous liquors to any Colorado licensed retailer licensed for the sale of alcohol beverages for consumption on the premises in any container prohibited by this regulation.
- B. No Colorado licensed retailer licensed under Article 47 for the sale of alcohol beverages for the consumption on the premises shall purchase or have in its possession upon or about the licensed premises spirituous liquor of over fourteen (14) percent alcohol by volume in any container of less than 375 milliliters, or vinous liquors of over fourteen (14) percent alcohol by volume in any container of less than 375 milliliters, and no vinous or spirituous liquors, regardless of alcohol content, shall be purchased or possessed on the licensed premises in any flat or flask-shaped container of less than twenty-four (24) ounce capacity. The provisions of this subsection B, shall not apply to an aggregate package of alcohol beverages that are, upon manufactured packaging and sale to a retailer, at least 375 milliliters in aggregate, and provided that the individual containers within the aggregate package are opened by the licensee prior to serving consumers, and that neither the seal nor any other device that can be used to seal the container is provided by the licensee to the consumer.
- C. The provisions of subsection B, herein above, shall not apply to any retailer licensed as a public transportation system pursuant to Article 47. However, no person licensed as a public transportation system shall purchase or possess on the licensed premises any vinous or spirituous liquors in any flat or flask-shaped container less than twenty-four (24) ounce capacity. In addition, no person licensed as a public transportation system shall sell or serve any vinous or spirituous liquor to any person except in an open container, or in a container which has had the lid, top, cork, or seal broken open or removed.
- D. The provisions of subsection B, herein above, shall not apply to containers of any size in hotel guest rooms nor shall it prohibit any hotel and restaurant licensee including an optional premise licensee, from purchasing or possessing for sale to customers, for on-premise consumption only, any container which is not less than 1.7 fluid ounce capacity; provided, however, the licensee must open the lid, top or cork, break and remove the seal, and pour the contents of the container into a serving glass or other serving container. The customer may retain the empty container as a souvenir.
- E. The alcohol beverage containers referred to in paragraphs B, C, and D of this regulation shall include all alcohol beverages marketed in the nearest metric equivalent measure container.

Regulation 47-908. Automatic and Electronic Dispensing Systems.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), and 12-47-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to establish requirements for an on- premises consumption licensee's self-dispensing system and its operation if a licensee has a self- dispensing system on the licensed premises.

The installation of automatic and electronic dispensing systems by on-premises consumption licensees is authorized provided that the following requirements are complied with:

- A. Such equipment must avoid an in-series hook-up which would permit the contents of vinous and spirituous liquor bottles or containers to flow from bottle to bottle before reaching the dispensing spigot or nozzle. Such equipment shall not permit intermixing of different brands, or differently labeled types, of the same kind of alcohol beverages within the dispensing systems.

- B. Where any part of such installation is within a locked area, upon demand to the licensee, such area shall be made available for inspection without delay; and upon request by an authorized representative of the licensing authority, or peace officers, such licensees shall open said area for inspection.
- C. Such equipment shall not be coin operated nor be able to accept other payment methods and shall be operated personally and directly only by the licensee or employees thereof. Provided, however, this subsection (C) does not apply to a dispensing system that is located at a licensed premises where the regular consumption of malt liquors, fermented malt beverages, vinous liquor or spirituous liquor by persons over the age of twenty-one is authorized under the following conditions:
1. Prior to activation of such device, the licensee or their employee has determined the patron is (1) twenty-one (21) years of age or older, and (2) is otherwise legally able to be served an alcohol beverage; and
 2. Such activation of the device is conducted by the licensee or employee thereof; and
 3. Such activation provides the ability to dispense no more than thirty-two (32) ounces of malt liquor or fermented malt beverage; or fourteen (14) ounces of vinous liquor; or two (2) ounces of spirituous liquor, per person, before reactivation is allowed; and
 4. The licensee or their employees shall monitor the sale, service, and consumption of any alcohol beverages from the dispensing system to ensure compliance with the Colorado Liquor Code and Rules.
 5. No alcohol shall be dispensed past the time in accordance to sections 12-47-901(5) or 12-47-301(10)(f), C.R.S. and any un-dispensed alcohol after such time will be forfeited and not be able to be dispensed at a later time. This paragraph (5) does not prohibit a refund of unused credit to a consumer.

Any dispensing device used solely by the licensee or their employees is not subject to paragraph C.

- D. No alcohol beverage shall be sold, served or dispensed from such system equipment unless the brand names of the manufacturer's product, corresponding to the container from which the alcohol beverage is drawn, are conspicuously posted and visible to the customer; or are imprinted on a card, sign or plate, and are visible to the public.
- E. The installation of such equipment without compliance with any of the foregoing requirements shall constitute good and sufficient cause for the suspension, cancellation or revocation of the license.

Regulation 47-910. Consumption Prohibited.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to prohibit on-premises consumption of alcohol beverages during any time prohibited by law.

No retail licensee shall permit the consumption of any alcohol beverages on the licensed premises at any time during such hours as the sale of such beverages is prohibited by law.

Regulation 47-912. Identification.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(A), and 12-47-901(10)(a), C.R.S. The purpose of this regulation is to define adequate identification criteria for purposes of demonstrating age, and establish the factors of an affirmative defense available to a licensee for an alleged sale to a minor.

- A. Licensees may refuse to sell alcohol beverages to any person unable to produce adequate, currently valid identification of age. As long as it contains a picture and date of birth, the kind and type of identification deemed adequate shall be limited to the following:

1. An operator's, chauffeur's or similar type driver's license issued by any state within the United States, any U.S. Territory, or any foreign country including Canada or Mexico.
 2. An identification card issued by any state for the purpose of proof of age as in accordance with sections 42-2-302 and 42-2-303, C.R.S.
 3. A military identification card.
 4. A passport, or passport identification card.
 5. An alien registration card.
 6. A valid employment authorization document issued by the U.S. Department of Homeland Security.
 7. A valid consular identification card from any foreign country.
- B. It shall be an affirmative defense to any administrative action brought against a licensee for alleged sale to a minor if the minor presented fraudulent identification of the type established in paragraph A above and the licensee possessed an identification book issued within the past three years, which contained a sample of the specific kind of identification presented for compliance purposes. As an affirmative defense, the burden of proof is on the licensee to establish by a preponderance of the evidence that the minor presented fraudulent identification.
- C. The identification types defined in paragraph (A) of this regulation fulfill the requirements of a valid identification stated in section 12-47-901(10)(a), C.R.S.

Regulation 47-913. Age of Employees.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to define permitted and prohibited roles for a liquor licensee's employees based upon the employee's age.

This regulation provides guidance as to the acceptable age of employees employed in the manufacture, sale, and/or distribution of alcohol beverages. However, nothing herein shall authorize a licensee to permit an employee under the age of eighteen (18) to sell or serve alcohol beverages under any circumstances, nor to permit a person at least eighteen (18) of age but less than twenty-one (21) years of age to possess alcohol beverages except as part of the person's employment responsibilities authorized herein.

- A. Liquor stores (pursuant to section 12-47-407, C.R.S.), liquor-licensed drug stores (pursuant to section 12-47-408, C.R.S.) and taverns (pursuant to section 12-47-412, C.R.S.):
1. Employees or agents of the licensee who are at least twenty-one (21) years of age may handle and otherwise act with respect to malt, vinous, and spirituous liquors in the same manner as that person does with other items sold at retail and may sell such alcohol beverages or check identification of the customers of the retail outlet.
- B. 3.2% beer licensees (On-premises, Off-premises, and On/Off Premises) and 3.2% special event permit holders:
1. Employees or agents of the licensee who are at least eighteen (18) years of age may handle and otherwise act with respect to fermented malt beverages in the same manner as such person would with other items sold at retail, without the supervision of persons who are at least twenty-one (21) years of age, including the sale of fermented malt beverage and checking identification of the customers of the retail outlet.
- C. Retailers licensed for on-premises consumption pursuant to article 47 of title 12, C.R.S., except for taverns licensed under section 12-47-412, C.R.S, and special event permit holders:

1. Employees or agents of the licensee who are at least twenty-one (21) years of age may handle and otherwise act with respect to alcohol beverages in the same manner as that person does with other items sold at retail and may sell such alcohol beverages or check identification of the customers of the retail outlet.
 2. Employees or agents of the licensee who are at least eighteen (18) years of age may handle and otherwise act with respect to alcohol beverages in the same manner as such person would with other items sold at retail, as long as they are under the direct supervision of a person who is at least 21 years of age.
- D. Wholesalers and manufacturers licensed pursuant to article 47, of title 12, C.R.S.
1. Employees or agents of the licensee who are at least twenty-one (21) years of age may handle and otherwise act with respect to alcohol beverages liquors in the same manner as that person does with other items sold at wholesale and may sell and/or deliver such alcohol beverages to retail outlets.
 2. Employees or agents of the licensee who are at least eighteen (18) years of age may handle and otherwise act with respect to alcohol beverages in the same manner as such person would with other items sold at wholesale, as long as they are under the direct supervision of a person who is at least 21 years of age. However, persons under the age of 21 shall not sell malt, vinous, or spirituous liquors or check identification of the customers of the retail outlet.

Regulation 47-914. Unlicensed Possession of Beverages.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to prohibit a licensee from possessing, maintaining, or permitting the possession on the licensed premises of any alcohol beverage that it is not licensed to sell or possess.

No licensee shall possess, maintain or permit the possession, on the licensed premises, of any alcohol beverage which it is not licensed to sell or possess for sale.

Regulation 47-916. Advertising.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(H), C.R.S. The purpose of this regulation is to provide guidance regarding certain prohibited advertising practices of malt, vinous, or spirituous liquor licensees regarding the alcohol content of beverages sold, distributed, or dispensed on the licensed premises.

No licensee for the sale or distribution of malt, vinous or spirituous liquor shall, upon or in proximity to, or referring to the licensed premises, use, advertise or exhibit, or permit to be used, published or exhibited, any sign, advertisement, display, notice, symbol or other device which advertises, indicates, implies or infers an alcohol content of alcohol beverages sold, distributed or dispensed upon such premises, of an amount or percentage greater or lesser than the actual alcohol content of such beverages.

Regulation 47-918. Removal of Alcohol Beverages from Premises.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to make clear, with the limited exceptions found in section 12-47-421, C.R.S. that knowingly permitting the removal of any alcohol beverage from an on-premises licensee's licensed premises is not permitted and the circumstances under which a licensee may be charged notwithstanding the posting of signs as outlined in subsection 12-47-901(9)(a)(II), C.R.S.

- A. Other than those licensees described in Section 12-47-421(2)(A), who may permit a patron to reseal a partially consumed bottle of vinous liquor (not to exceed 750 ml) which was originally sold for on premises consumption; no licensee, manager or agent of any establishment licensed for on-premises consumption shall knowingly or recklessly permit the removal from the licensed premises of any alcohol beverages in sealed or unsealed containers.

1. Licensees that post signs as specified in Section 12-47-901(9)(a)(II)(A), C.R.S., must post the signs at all exits in a location that can be easily identified and read by patrons using those exits.
 2. Regardless of whether a licensee posts a sign as specified in Section 12-47-901(9)(a)(II)(A), C.R.S., the licensee may be charged with knowingly permitting the removal of an alcohol beverage from the licensed premises if the licensee shows reckless disregard for the prohibition against alcohol beverage removal from the licensed premises, which may include permitting the removal of an alcohol beverage from the licensed premises three times within a twelve-month period, regardless of whether the three incidents occur on the same day or separate days. A licensee may be charged with knowingly permitting the removal of an alcohol beverage from the licensed premises upon the third occurrence of alcohol beverage removal from the licensed premises.
- B. Licensees described in paragraph A of this regulation who permit a patron to remove a partially consumed bottle of vinous liquor shall reseal the bottle with a cork or other commercially manufactured stopper
 - C. Patrons transporting a partially consumed bottle of vinous liquor in a motor vehicle shall comply with the requirements of 42-4-1305, C.R.S.
 - D. Wholesalers may remove sealed and unsealed containers of alcohol beverages from liquor licensed premises that had been introduced during the retailer sampling.

Regulation 47-920. Solicitation of Drinks.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), and 12-47-202(2)(a)(I)(M), C.R.S. The purpose of this regulation is to prohibit the solicitation of a drink or the purchase of a drink for the solicitor, whether the solicitor is an employee, agent, or any person on the licensed premises.

- A. No licensee, manager or agent shall employ or permit upon any premises licensed for on- premises consumption, any employee, waiter, waitress, entertainer, host or hostess to mingle with patrons and personally beg, procure, or solicit the purchase or sale of drinks or beverages for the use of the one begging, procuring or soliciting or for the use of any other employee.
- B. No licensee, manager or agent shall permit upon any licensed on-sale premises anyone to loiter in or about said premises who solicits or begs any patron or customer of, or visitor in, such premises to purchase any drinks or beverages for the one soliciting or begging.

Regulation 47-922. Gambling.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(M), and 12-47-901(5)(n), C.R.S. The purpose of this regulation is to clarify and define prohibited and permitted activities, games, and equipment on the licensed premises concerning gambling.

- A. Activities prohibited.
 1. No person licensed under Article 46, Article 47 and Article 48 of Title 12 to sell at retail shall authorize or permit on the licensed premises any gambling, or use of any gambling machine or device, or the use of any machine which may be used for gambling, except as specifically authorized for a racetrack, pursuant to Article 60 of Title 12 C.R.S., or for limited gaming, pursuant to Article 47.1 of Title 12 C.R.S.
 2. No person licensed under these Articles shall authorize or permit on the licensed premises the holding of any lottery, except as authorized by Part 2 of Article 35 of Title 24, C.R.S. 1973 and any rules and regulations promulgated thereunder. Nothing in this regulation shall be deemed to prohibit the conducting of games of chance authorized by the bingo and raffles law (Article 9 of Title 12, C.R.S. 1973).

B. Equipment prohibited.

No person licensed under Article 46, Article 47 and Article 48 of Title 12 to sell at retail shall authorize, permit or possess on the licensed premises any table, machine, apparatus or device of a kind normally used for the purpose of gambling, except as specifically authorized and when licensed for limited gaming, pursuant to Article 47.1 of Title 12 C.R.S. Prohibited equipment shall include video poker machines and other devices, defined either as slot machines pursuant to C.R.S. 12-47.1-103(26) and/or gambling devices pursuant to C.R.S. 18-10-102.

C. Equipment permitted.

1. Nothing in this regulation shall be deemed to prohibit the use of bona fide amusement devices, such as pinball machines or pool tables, provided however that such devices do not and cannot be adjusted to pay anything of value, and that such devices are not used for gambling, as defined in C.R.S. 18-10-102, as the same may be amended from time to time.
2. A licensee is permitted to conduct, on its licensed premises, tournaments or competitions involving games of skill as permitted by C.R.S. 18-10-102(2)(a), including the awarding of prizes or other things of value to participants, in connection with the use or operation of devices such as and including, but not limited to:
 - a. Pool tables
 - b. Billiard tables
 - c. Pinball machines
 - d. Foosball machines
 - e. Basketball games
 - f. Air hockey games
 - g. Shuffleboard games
 - h. Dart games
 - i. Bowling games
 - j. Golf Games
3. Licensees will not be considered in violation of this regulation if they permit on their licensed premises card or similar games of chance to be played between natural persons whereas no person is engaging in gambling as defined by C.R.S. 18-10-102(2).

D. Inspections and records.

1. Licensees shall keep a complete set of records, including operating manuals, concerning any game machine or device maintained on their licensed premises. Licensees who do not own their machines or devices shall be required to maintain a copy of their current contract with the vendor. This contract at a minimum shall detail the division of profits between the parties and how monies will be accounted for, including the payment of any monies, credits, or any other thing of value to customers of the licensee. Copies of any outstanding notes or loans between the parties must also be maintained by the licensee.

2. Licensees shall make available without delay to agents of the state or local licensing authority access to the interiors of any machine or device maintained upon the licensed premises to assist in the determination of whether or not said machine or device is permitted or prohibited equipment.

Regulation 47-924. Importation and Sole Source of Supply/Brand Registration.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(D), C.R.S. The purpose of this regulation is to establish procedures and forms required for a party to import alcohol beverages into the state of Colorado and to require where applicable compliance with requirements in the Federal Alcohol Administration Act.

- A. Before any person, firm, company, partnership, or corporation ships any alcohol beverages into the State of Colorado, each such entity shall be properly licensed by the state licensing authority. The only exceptions to licensing for importation may be found under 12-47-104 and 12-47-106, C.R.S.
- B. At least thirty (30) days prior to the sale or shipment of any alcohol beverages into the State of Colorado, each licensed manufacturer, non-resident manufacturer or importer shall submit to the state licensing authority a complete report, on forms prepared and furnished by the state licensing authority, which shall detail: the licensee's name and license number; the designated Colorado licensed wholesaler(s); the name of the United States primary source of supply; the products to be imported, including the brand name, class or type, and fanciful name; and evidence of compliance with federal labeling requirements found in the "Federal Alcohol Administration Act" 27 CFR Subchapter A-Liquors Part 4, Subpart D; Part 5, subpart D; and Part 7, Subpart C. The import licensee, if not the product manufacturer, shall also include with said form a separate letter from the primary source of supply designating such import licensee as the primary source in the United States or the sole source of supply in Colorado. A separate form is required for each primary source. Each non-resident manufacturer, manufacturer and importer shall also remit with said form the appropriate brand registration and/or sole source fee(s). A separate sole source fee is required for each primary source that an importer represents.
- C. Should the primary source of supply change its designated licensed importer, the newly designated licensed importer is required to submit the same information described in paragraph B of this regulation on required forms thirty (30) days prior to shipment of any alcohol beverages. The newly designated importer shall also remit the appropriate sole source and brand registration fees with said form.

Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Director of the Colorado Liquor Enforcement Division of the Department of Revenue, 1881 Pierce Street, Suite 108A, Lakewood, Colorado Tel: 303-205-2300, and copies of the material may be examined at any state publication depository library.

Regulation 47-926. Interference with Officers.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b) and 12-47-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to prohibit the use or threat of force against a licensing authority employee or peace officer exercising their duties under the article.

No licensee or person shall by force or threat of force, including any letter or other communication threatening such force, endeavor to intimidate, obstruct or impede inspectors of the Liquor Enforcement Division, their supervisors or peace officers from exercising their duties under the provisions of this article. The term "threat of force" includes the threat of bodily harm to the officer or to a member of his/her family.

Regulation 47-930. Testing of Alcohol Content – Malt Liquor and Fermented Malt Beverage.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(M), and 12-47-202(2)(a)(I)(S), C.R.S. The purpose of this regulation is to require licensees to make malt liquor and fermented malt beverage available for sampling and analysis to the Department of Revenue, Liquor Enforcement

Division upon its request to assist with compliance and enforcement of alcohol content limits on fermented malt beverages.

All licensees for the sale of malt liquor and fermented malt beverage shall, upon request of the Department of Revenue, Liquor Enforcement Division, make available a sufficient quantity of such malt liquor or fermented malt beverage to enable sampling or analysis thereof. The licensee shall be notified of the results of the sampling or analysis without delay.

Regulation 47-940. Powdered Alcohol – Packaging and Labeling.

Basis and Purpose. *The statutory authority for this regulation is found at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(A), and 12-47-401(2), C.R.S. The purpose of this regulation is to establish packaging and labeling standards for powdered alcohol products.*

Any manufactured package of powdered alcohol as defined in section 12-47-103(23.7), C.R.S. shall have the following words:

THIS PRODUCT CONTAINS ALCOHOL

in a bold-face font at least ¼ inch in height, which is a part of the permanent manufactured packaging of the powdered alcohol product.

Each package that contains powdered alcohol shall be child resistant. For the purpose of this regulation, “child resistant” means packaging that is:

- A. Designed or constructed to be significantly difficult for children under five (5) years of age to open and not too difficult for normal adults to use properly.
- B. Resealable.

Regulation 47-942. Powdered Alcohol Regulation.

Basis and Purpose. *The statutory authority for this regulation is found at subsections 12-47-202(1)(b), 12-47-202(2)(a)(I)(A), and 12-47-401(2), C.R.S. On March 15, 2015, the Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) allowed the use of powdered alcohol as a distilled spirit. The purpose of this regulation is to establish rules and guidance regarding the manufacture, purchase, sale, possession, and use of powdered alcohol and clarifying that because powdered alcohol is defined as a spirituous liquor all regulations that apply to spirituous liquor apply to powdered alcohol.*

- A. Pursuant to section 12-47-103(36), C.R.S. Powdered alcohol is defined as a spirituous liquor; therefore all regulations pertaining to spirituous liquor apply to powdered alcohol.
- B. Powdered alcohol as defined in section 12-47-103(23.7), C.R.S. which is not manufactured and intended for use as an alcohol beverage shall not be subject to regulations set forth in 1 C.C.R. 203-2. Uses may include (but are not limited to) industrial, research hospitals, educational institutions, and pharmaceutical or biotechnology companies conducting bona fide research.
- C. Powdered alcohol sold or dispensed at a business licensed for on-premises consumption must be reconstituted as instructed on the label prior to being served.
- D. For the purpose of the Colorado Liquor Rules, 1 C.C.R. 203-2, the liquid volume of powdered alcohol shall be the amount of liquid as directed on the manufactured packaging for each powdered alcohol product.